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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

Six4Three, a Delaware limited liability company,

Plaintiff;

v.

Facebook, Inc., a Delaware corporation; **Mark Zuckerberg**, an individual; **Christopher Cox**, an individual; **Javier Olivan**, an individual; **Samuel Lessin**, an individual; **Michael Vernal**, an individual; **Ilya Sukhar**, an individual; and **Does 1–50**, inclusive,

Defendants.

Case No. CIV533328

Assigned for all purposes to Hon. V. Raymond Swope, Dep't 23

DECLARATION OF THOMAS SCARAMELLINO

[SIGNATURE BY FAX]

I, Thomas Scaramellino, declare under penalty of perjury as follows.

1. My name is Thomas Scaramellino. I am over the age of 18 and have personal knowledge of the facts set forth herein and I could and would testify to them if called to do so. I make these statements in opposition to Facebook's *ex parte* application of April 11, 2019.

2. I have never "leaked" or otherwise disclosed or facilitated a "leak" or other disclosure of Facebook's confidential or highly confidential information to any third party, including any media or government entity.

3. Facebook's repeated accusations before this Court that I have leaked its confidential and highly confidential files to media and government entities, and further that I have done so on multiple occasions, has absolutely no basis in fact. No actual evidence of my involvement in any alleged leak has actually been placed before the Court nor has any been subjected to the requirements of due process, including any actual evidentiary hearing or any other form of cross-examination.

4. So long as Facebook accepted that I was not the target of any contempt charge (as I cannot see how I could be given that I had no role in events that occurred in London), I offered to sit for a deposition by Facebook's counsel in this "collateral litigation" while I was in San Mateo for the March 13, 2019 hearing, which I was ordered to attend in person by the Court. My counsel made this offer in open court at the hearing. Facebook declined my offer after having previously complained to the Court that I was evading its attempts to depose me.

5. Facebook's claim that I am once again evading its attempts to depose me are without basis. I remain willing to sit for a deposition in my home county in Sullivan County, New York on the condition that I not be the target of any alleged contempt (as there is simply no basis whatsoever for this) and also that I be deposed only once in this "collateral litigation," a condition for which the Court previously provided at the March 13 hearing I attended. I no longer have a place of business in Manhattan.

6. No complaint or motion accusing me of any wrongdoing has been served on me notwithstanding that Facebook has accused me of having committed a crime or fraud in its *ex parte* application and about a half-dozen other motions or *ex parte* applications in recent months.

If the circumstances are so extraordinary that they warrant multiple depositions of me, then surely I should be entitled to know if I am being deposed multiple times as a percipient witness, a defendant in a civil proceeding, or a defendant in a criminal proceeding, when all of the allegations sufficient for me to be deposed in any of those capacities have already been placed before the Court.

7. On the morning of April 8, 2019, I went to the emergency room at my local hospital because I was experiencing acute pain in my right knee and was unable to bend my right knee. The attending physician placed my knee in an immobilizer and gave me crutches, which I have been using since. I have various appointments scheduled with orthopedic doctors, including an anticipated MRI imaging exam, over the coming weeks. If necessary, I am willing to provide verification of the facts stated herein *in camera* to the Court upon the Court's request, which includes personal and confidential medical information from my EPIC systems records. As a result of this issue, I am unable to travel for a deposition during the timeframe requested by Facebook. I am further in substantial and acute pain which would affect my ability to sit for a deposition for an extended period of time and concentrate. Nonetheless, I am willing to sit for a video or phone deposition for up to four hours on April 18 or 19 on the condition, ordered by the Court, that this will be the only deposition taken of me during this entire "collateral litigation".

8. Pursuant to an Order of this Court, on December 19, 2018, in the presence of Facebook's forensics firm and more than a half-dozen attorneys involved in this case, I destroyed all materials and communications in my possession that might reflect or contain Facebook's confidential or highly confidential files. I further certified such destruction that same day.

9. Sometime in late February, Mr. Kramer mentioned to me that NBC wanted to report on this case. Since that time, I have participated in phone calls and exchanges facilitated by Mr. Kramer with NBC reporters who have been preparing a story about Mr. Kramer and the case. I met an NBC reporter in person once, after the March 13 hearing, which the reporter had attended. During the entire time in which Mr. Kramer and I have engaged with NBC, I did not have in my possession, and to my knowledge Mr. Kramer has not had in his possession, any of

Facebook's confidential or highly confidential files. Thus, it was not possible for me to transmit them to NBC, as Facebook claims in its *ex parte* application.

10. Facebook has made no showing that any of the alleged "leaks" since the seizure of documents by the United Kingdom Parliament in late November come from any source other than that very seizure. Almost half a year later, Facebook still has not documented before this Court exactly what measures it has taken, and what communications it has had, with the United Kingdom Parliament to identify and secure its confidential and highly confidential documents.

11. It has been public for going on three years that 643's generic allegations (which do not disclose any confidential information) rely on extensive published readily available facts, as well as facts collected from the discovery phases of litigation. Amending a Complaint over time (as 643 has done repeatedly through a Fifth Amended Complaint without objection by Facebook) is a common practice followed by most business litigation attorneys and 643's trial counsel and local counsel were and are no exception. At no time did Facebook ever claim that our Amended Complaints could not be publicly filed, and they were without objection.

12. To the extent the Court's ruling on the crime-fraud exception relies upon the fact that 643 states that it has "extensive evidence" and that allegations and characterizations are based on extensive evidence, this has been public information since at least January 2017. Why did it take Facebook more than two years to allege and find a violation of the Protective Order regarding these statements and characterizations? For instance, the following information has been readily available on the public docket for many months:

- "643's review of Facebook's initial production also clearly reveals the identities of the decision-makers and rough timeframes under which the decision at the heart of 643's [Second Amended Complaint] was made.... It is abundantly clear from Facebook's production that the deceptive, anti-competitive and fraudulent scheme alleged by 643 in its SAC was spearheaded by Mark Zuckerberg (CEO) sometime prior to October 2012 and involved at least the following individuals: Sam Lessin (VP Product Management), Chris Cox (Chief Product Officer), Javier Olivan (VP Growth), Michael Vernal (VP Engineering), and Ilya Sukhar (Head of Developer Products). The decision and its rationale were then communicated to the next layer of management, including Douglas Purdy (Director of Engineering), Constantin Koumouzelis (Product Manager), Dan Rose (VP Partnerships and Platform Marketing), Ime Archibong (Director, Strategic Partnerships, Monica Bickert (Head of Global Policy Management), Justin Osofsky

(Director, Platform Operations) and others, from late 2012 through the middle of 2013." Discovery Proposal Pursuant to Court's December 13, 2016 Order, filed January 20, 2017, at 6-7.

- "Plaintiff's review of Facebook's files confirms this suspicion and reveals abundant evidence specifically describing the negotiation of multiple, tied contracts (at least one contract to extract advertising payments and another to provide special data access). Facebook's files further confirm that significant engineering effort and capital was deployed in executing these contracts. As such, Facebook and its partners are separate entities undertaking acts in concert which caused proximate harm to Plaintiff, other companies, and the public by actually depriving the marketplace of competition." Reply to Opposition to Motion to Remand, filed February 9, 2017, at 9-10 (3:17-cv-00359-WHA, N.D. Cal.)

- "The evidence submitted by Plaintiff supporting these claims consists of a large volume of internal discussions among Facebook employees regarding Defendants' motivations for, and implementation of, various decisions related to access to Facebook's software APIs, primarily from 2012 to 2015, as well as reliance by Plaintiff on false representations concerning such access and damages suffered by Plaintiff when the promised access was eliminated, including interference in its contractual and prospective relations with customers." Proposed Order Denying Individual Defendants' Special Motion to Strike, filed July 9, 2018, at 11.

- "In mid-to-late 2012, the Conspiring Facebook Executives began communicating to various Facebook employees that data access would be severely restricted to many companies that built applications related to contacts and calendar management, messaging, photo sharing, video sharing and streaming, online dating, lifestyle, games, news, books, fitness and various utility applications." Fifth Amended Complaint, filed January 12, 2018 (5AC) ¶ 89 (39:14-18); Fourth Amended Complaint, filed November 1, 2017 (4AC) ¶ 83 (30:24-28).

- "Facebook architected its Platform in a manner designed to violate user privacy as early as 2009, which entailed: (1) separating the privacy settings for data a user shared with friends in apps the user downloaded ("user data") with the privacy settings ("Apps Others Use" settings) for data the user shared with friends in apps the friends downloaded ("friend data") (Jud. Not. Dec., ¶ 32, Ex. 31, Federal Trade Commission Complaint, at 4-7); (2) hiding the Apps Others Use settings to ensure most Facebook users were not aware that these settings were distinct from the main privacy settings (*Id.*, at 4-9); (3) making the default setting for sharing data with Apps Others Use set to "on" so Facebook could funnel more data to developers under the guise of user consent (*Id.*, at 7-11); and (4) deliberately failing to pass privacy settings for data transmitted to developers via Facebook's APIs, signaling to developers that all friend data was public and could be treated as such." Opposition to Individual Defendants' Anti-SLAPP Motion, filed May 17, 2018, at 2-3.

- "Zuckerberg then brought Vernal directly into the discussions in late 2012 in order to oversee and implement the bait and switch plan. Upon information and belief, Vernal

planned a public announcement of this decision at the end of 2012 but Zuckerberg prohibited the announcement." 5AC ¶ 85 (37:14-17).

- "Upon information and belief, starting in mid-to-late 2012 and continuing through mid-2013, Zuckerberg communicated the decision he had already made to restrict Graph API data in order to restrain competition for Facebook's new products and to prop up Facebook's new mobile advertising business to senior executives on the Platform tea, including Vernal (VP Engineering for Platform), Sukhar (Head of Developer Products), Doug Purdy (Director of Engineering for Platform), Eddie O'Neil (Product Manager for Platform), and other senior members of the Platform and developer teams. Upon information and belief, starting in late 2012 and throughout 2013, at Zuckerberg's instruction, Vernal, Sukhar, Purdy, O'Neil and others began implementing Zuckerberg's decision to restrict data access for anti-competitive reasons under the Reciprocity Policy framework. Upon information and belief, the Platform team, managed by Vernal, was working on a public announcement of these changes to be released before the end of 2012. However, the changed were not publicly disclosed." 5AC ¶ 214 (76:1-12); 4AC ¶ 208 (66:10-21).

- "The Conspiring Facebook Executives made various layers of management aware of this decision on a need-to-know basis periodically from late 2012 until late 2013 and, at all times, required such employees to actively conceal and/or make only partial disclosures of these material facts." 4AC ¶ 106 (40:24-27).

- "In the summer and fall of 2012, Lessin worked with Zuckerberg and other Facebook executives like Sheryl Sandberg, Andrew Bosworth and Dan Rose to weaponize developers' reliance on Facebook Platform by threatening to break many software applications unless the developer made significant purchases in unrelated advertising using Facebook's new mobile advertising product. Upon information and belief, Lessin was instrumental in developing the plan whereby Facebook approached companies to buy advertising under the threat that if they did not do so, Facebook would break their applications by removing access to public Platform data." 5AC ¶ 26 (13:18-25).

- "This reference to Facebook as a 'monopolist' and as 'monopolizing for itself' is not sufficient to make any reasonable determination as to whether Facebook's conduct was unilateral or in concert with other partners with which it executed binding agreements to extract large advertising payments in exchange for their continued access to data that had been shut off to all other companies, thereby giving these partners an insurmountable competitive advantage in various software markets." Reply to Opposition to Motion to Remand, filed February 9, 2017, at 2 (3:17-cv-00359-WHA, N.D. Cal.).

- "Further, Zuckerberg's bait and switch scheme violates the Cartwright Act as Facebook maliciously tied its Platform APIs (the tying product) to its Neko advertising product (the tied product), which are entirely unrelated and distinct products. Facebook refused to offer the Platform APIs unless companies purchased Neko advertising. Facebook had sufficient economic power in the market for Platform APIs (it was the sole provider of these APIs) to coerce companies into purchasing Neko advertising, and the tying arrangement prohibited an estimated 40,000 companies from purchasing advertising (the tied product) as they no longer had products to advertise. CACI (2017) (Bus. & Prof.

Code, § 16727)..." Opposition to Individual Defendants' Anti-SLAPP Motion, filed May 17, 2018, at 13-14, fn. 25.

- "Tinder, along with a number of other companies that rely upon photo or friend information from Facebook and executed whitelist agreements under Facebook's 'reciprocity principle,' are competitors of Plaintiff. It is entirely plausible that Facebook and each of these entities constitute a trust under the Cartwright Act as they engaged in 'a combination of capital, skill, or acts by two or more persons to achieve an anticompetitive end.' The anticompetitive ends encompass restrictions in trade or commerce, the reduced production of a commodity and contracts to preclude free competition, and the combination of interests in connection with a sale of advertising. For instance, the number and kinds of software applications from which consumers could choose decreased precipitously once Facebook shut down access to its data. Consumers were forced to choose from a much smaller pool of applications – those developed exclusively by Facebook or companies from which Facebook could extract large advertising payments." Reply to Opposition to Motion to Remand, filed February 9, 2017, at 14 (3:17-cv-00359-WHA, N.D. Cal.).

- "At Zuckerberg's personal direction, Facebook used its platform as a weapon to gain leverage against competitors in a host of ways, threatening to shut down access to publicly available data to any company that crossed Facebook's radar in a wide range of circumstances, including threats to shut down data access; unless the company sold to Facebook for a purchase price below their fair market value; unless the company purchased large amounts of unrelated advertising with Facebook; unless the company transferred intellectual property to Facebook; or unless the company fed all of its data back to Facebook, where it would then be available to the company's competitors, placing the company's business at great risk." 5AC ¶ 3 (3:9-17). 4AC ¶ 3 (3:8-16).

- "Beginning in 2012 and continuing until 2015, at Zuckerberg's personal direction, Facebook executives instructed their subordinates to identify categories of applications that would be considered competitive and to develop a plan to remove access to critical data necessary for those applications to function, thereby eliminating competition across entire categories of software applications...." 5AC ¶ 7 (5:3-7); 4AC ¶ 7 (4:27-5:3).

- "Zuckerberg held discussions with Defendants Cox, Olivan, and Lessin (in addition to other Facebook executives like Sheryl Sandberg, Daniel Rose, and Andrew Bosworth) where Zuckerberg communicated his decision to shut down access to Graph API data to applications that were competitive with current Facebook products and with products Facebook may choose to launch in the future, even if Facebook had not begun working on such products." 5AC ¶ 85 (37:6-12); 4AC ¶ 79 (29:14-19).

- "Once Zuckerberg decided to remove the Graph API Data to competitors, Zuckerberg personally maintained an ever-growing list of competitors that only he could authorize blacklisting from the Graph API Data. Upon information and belief, once a Developer was blacklisted from the Graph API Data, any applications the Developer built could no longer use any of the blacklisted data that Facebook purportedly provided publicly on fair and neutral terms to all Developers. Upon information and belief, blacklisted data often included the Graph API data, including the full friends list, friends permissions and

newsfeed APIs – data types that were among the most popular on Facebook Platform and upon which 643's business and many other businesses depended." 5AC ¶ 211 (74:7-15).

- "Zuckerberg tasked Sukhar and Vernal with developing a plan to communicate and mask this fraudulent scheme to Facebook employees and, eventually, Developers and the public." 5AC ¶ 88 (39:4-5); 4AC ¶ 82 (30:14-15).

- "Zuckerberg's motivations for his decision to create a Reciprocity Policy and shut down public access to Graph API were two-fold: (1) restrain competition in a wide range of software markets to make room for new products from Facebook and its close partners; and (2) shut down all mechanisms for apps to grow organically in order to force apps to prop up Facebook's new mobile advertising business or else Facebook would shut them down. The first motivation helped ensure that no new competitive threat could ever become as big as Facebook; the second motivation ensured that Facebook could make the transition from desktop to mobile without experiencing a significant drop in revenues in order to turn around the underperforming business." 5AC ¶ 209 (73:5-13); 4AC ¶ 203 (63:18-26).

- "At least by 2012, Zuckerberg personally oversaw a practice to weaponize Platform APIs, including a wide range of user and friend data, by inducing companies to rely on this data and then threatening to remove access unless these companies made exorbitant purchases in Facebook's nascent mobile advertising product, known internally as 'Neko' ads and publicly as "Mobile App Install" ads. Zuckerberg blacklisted any companies that refused to buy these Neko ads in exchange for continued access to data that Facebook claimed for years was publicly available at no charge. This blacklisting practice also applied to companies that Zuckerberg in his sole discretion considered competitive with current or future Facebook products, even products Facebook had not yet built, and notwithstanding that most of these developers operated entirely within Facebook's rules. Opposition to Individual Defendants' Anti-SLAPP Motion, filed May 17, 2018, at 4-8.

- "Zuckerberg's decision to weaponize a platform economy that Facebook represented for years as open, fair and neutral stemmed from a simple fact that by 2012 had devastating consequences for Facebook: people began accessing the Internet primarily from their phones, but Facebook had built its advertising business for desktop computers, which caused Facebook's revenues and stock price to plummet. Facebook lost over $200 million in the second and third quarters of 2012 because it had no mobile advertising business. By mid-2012, Facebook's most senior executives explored ways to leverage the fact that hundreds of thousands of companies relied on Facebook Platform in order to reboot its business for smartphones, presenting various options for restricting public Platform APIs to its Board of Directors in August 2012, including: [redacted]. In November 2012, after many months of discussion, Zuckerberg made his final decision to implement a version of the reciprocity policy called 'full reciprocity,' instead of implementing a public pricing program like Twitter or a revenue share model like the neutral platforms operated by Apple and Google - the top Platform executive, Vernal, referred to this decision as [redacted] outside Zuckerberg's presence. Zuckerberg's full reciprocity policy caused Facebook's privacy and policy apparatus to disintegrate in favor of an arbitrary enforcement environment in which Facebook offered user data, and

in particular friend data, to certain developers that were willing to reciprocate with Facebook, typically by agreeing to purchase no less than $250,000 per year in unrelated Neko ads, while other developers that Facebook considered competitive were blacklisted from accessing this data even though they never broke any rules or violated anyone's privacy." Opposition to Individual Defendants' Anti-SLAPP Motion, filed May 17, 2018, at 4-8.

- "Facebook publicly announced an intentionally vague reciprocity policy in January 2013 that refused to define a 'competitive' service or 'core functionality' in order to mislead companies into thinking that only online social networks (e.g. MySpace, LinkedIn) would be considered competitive; but Facebook's internal definition of a competitive service included virtually every kind of consumer application, including those Facebook explicitly induced in its reciprocity announcement to continue using APIs it had already decided to shut down. This enabled Facebook to use its policies as an excuse to eliminate any developer for any reason whatsoever.... The 'full reciprocity' policy was unworkable as an actual policy but was extremely effective as a 'get out of jail free' card by giving Facebook: (1) an excuse to threaten to or actually shut down certain developers unless they purchased mobile ads or provided other consideration Facebook deemed valuable in its sole discretion; (2) the ability to blame developers for privacy violations related to data Facebook chose to funnel to developers without any privacy controls; and (3) cover to continue to induce developers to rely on the very APIs Zuckerberg had decided to privatize in 2012 in order to gain more leverage. Under cover of the full reciprocity policy, the Growth team (Olivan) illegally accessed non-public information about competitive applications in order to monitor their popularity and then directed the Platform team (Vernal) to shut down an application once it became widely used. By early 2013, armed with an official reciprocity policy vague enough for Zuckerberg to consider any company a criminal, the initial pay-to-play tests began paying off as Neko ads grew faster than anyone's wildest expectations." Opposition to Individual Defendants' Anti-SLAPP Motion, filed May 17, 2018, at 4-8.

- "Zuckerberg and the Conspiring Facebook executives requested that Facebook employees actively conceal the decision to restrict data access to competitors from internal employees, Developers, and the public. Upon information and belief, the Conspiring Facebook Executives made various layers of management aware of this decision on a need-to-know basis periodically from late 2012 until late 2013 and, at all times, required such employees to actively conceal and/or make only partial disclosures of these material facts." 5AC ¶ 112 (49:20-26); 4AC ¶ 106 (40:21-27).

- "Beginning in 2013 and coalescing around February 2014, Zuckerberg concocted and disseminated a completely fabricated narrative to mask the deceptive and anti-competitive schemes that Zuckerberg and the other Facebook executives had decided upon and began implementing in 2012. This fabricated narrative centered on the fact that the data being shut off to tens of thousands of smaller software companies was rarely used and/or violated user trust and control over their data.... These fabricated reasons for shutting off data critical to the functioning of tens of thousands of applications played no role in the actual decisions made by Zuckerberg and ratified and implemented by other Facebook executives." 5AC ¶ 10 (6:11-16); 4AC ¶ 10 (6:6-14).

- "From late 2013 through early 2014, Zuckerberg worked with the Conspiring Facebook Executives and other companies to construct a fraudulent narrative around 'user trust' designed to mask the true reasons he decided to close access to Facebook's allegedly Open Graph. Upon information and belief, Zuckerberg personally decided to announce the closing of Graph API at F8 on April 30, 2014 and personally drafted his speech that actively, maliciously and fraudulently suppressed material information and revealed only partial information." 5AC ¶ 124 (55:16-22); 4AC ¶ 118 (46:14-20).

- "Zuckerberg, Vernal and Facebook Director of Engineering Doug Purdy, aggressively sought to make Defendant Sukhar the front man externally for this bait and switch scheme, which Sukhar resisted until late 2013 because he knew the conduct was wrong and malicious. However, in late 2013, Sukhar conceded and from that time on actively ratified, acquiesced in and advanced key components necessary to the implementation of the fraudulent and anti-competitive scheme in 2014 and 2015." 5AC ¶ 85 (38:4-9).

- "Once Zuckerberg decided to remove the Graph API Data to competitors, Zuckerberg personally maintained an ever-growing list of competitors that only he could authorize blacklisting from the Graph API Data. Upon information and belief, once a Developer was blacklisted from the Graph API Data, any applications the Developer built could no longer use any of the blacklisted data that Facebook purportedly provided publicly on fair and neutral terms to all Developers. Upon information and belief, blacklisted data often included the Graph API data, including the full friends list, friends permissions and newsfeed APIs – data types that were among the most popular on Facebook Platform and upon which 643's business and many other businesses depended." 5AC ¶ 211 (74:7-15); 4AC ¶ 205 (64:19-27).

- "The evidence submitted by Plaintiff supporting these claims consists of a large volume of internal discussions among Facebook employees regarding Defendants' motivations for, and implementation of, various decisions related to access to Facebook's software APIs, primarily from 2012 to 2015, as well as reliance by Plaintiff on false representations concerning such access and damages suffered by Plaintiff when the promised access was eliminated, including interference in its contractual and prospective relations with customers." Proposed Order Denying Individual Defendants' Special Motion to Strike, filed July 9, 2018, at 11.

- "Facebook directed a project to collect certain data from consumers who had downloaded the Onavo app, a virtual private network app downloaded by approximately 30 million people, which Facebook purchased in October 2013. Upon information and belief, before the WSJ article, Facebook failed to disclose that it used Onavo data to measure what people do on their phones beyond Facebook's own suite of apps, including detailed information on things such as which apps people generally are using, how frequently, for how long, and whether more women than men use an app in a specific country.... Facebook failed to disclose that it used this data for competitive intelligence of numerous apps.... Facebook's decision to purchase a large competitive application (WhatsApp) was heavily influenced by Facebook's ability to obtain this non-public information from Onavo... Had Facebook fully disclosed this deceptive practice publicly to users and Developers when it made public disclosures regarding its purchase of Onavo and its

update to Onavo's Terms of Service, then 643 would not have invested in or continued to invest in building its business." 5AC ¶ 227 (81:21-82:11); 4AC ¶ 221 (71:21-72:9).

- "Olivan accomplished this by monitoring apps installed on the phones of 30 million people who had installed Onavo, a virtual private network app that Facebook bought in 2013; Olivan was able to track highly sensitive information about at least 82,000 software applications as a result of violating the privacy of these 30 million people." Opposition to Individual Defendants' Anti-SLAPP Motion, filed May 17, 2018, at 8, fn. 15.

- "At least by 2012 or 2013, Facebook collected various content and metadata regarding communications on Android Phones without fully disclosing this to Facebook's users." 5AC ¶ 228 (82:12-14); 4AC ¶ 222 (72:10-12).

- "At least by 2013 and continuing at least through 2015, Facebook continued to explore and implement ways to track users' location, to track and read their texts, to access and record their microphones on their phones, to track and monitor their usage of competitive apps on their phones, and to track and monitor their calls. For example, upon information and belief, Facebook expanded its program to access and monitor the microphone on Android phones in 2015 without securing the explicit consent of all users and while only providing partial disclosures as to what information was being obtained and for what purposes it was being used." 5AC ¶ 233 (84:10-17); 4AC ¶ 227 (73:23-74:2).

- "Facebook deliberately ignored the privacy settings of a Facebook user's friend list in order to improve a certain prominent feature in the Facebook app and website. Upon information and belief, Facebook made partial public disclosures of this practice while withholding material facts that, if disclosed, would have materially qualified Facebook's public statement." 5AC ¶ 229 (83:1-6); 4AC ¶ 223 (72:24-28) (refers directly to an article discussing the People You May Know feature: https://gizmodo.com/facebook-figured-out-my-family-secrets-and-it-wont-tel-1797696163).

- "In 2013 and 2014 Facebook deliberately implemented code to have a user's privacy setting lapse after a period of time, requiring the user to go through additional effort in order to have the user's privacy settings respected. Facebook made partial disclosures around this time regarding privacy settings, but did not fully disclose that it had caused certain settings to lapse after a period of time. Upon information and belief, at all times, the employees involved in this project were acting under the direction and approval of Zuckerberg, Cox, Lessin and Olivan." 5AC ¶ 231 (83:18-24); 4AC ¶ 225 (73:9-15); *see also* 5AC ¶ 226; 4AC ¶ 220 (Zuckerberg directly overseeing all of these privacy-violating requests)

13. Based on the foregoing, it is clear to me that Defendants have simply ignored the reality of the public nature of the alleged crimes and alleged frauds they have committed and their "public apologies" represent, to some degree, an admission that their past practices were wrong, if not wrongful, and that the governmental and public interest litigations against them including this very litigation has promoted long-needed changes at Facebook.

14. The emails sent by 643 and its legal team to media and government entities do not contain Facebook's confidential and highly confidential information. All of the information contained in these emails can be found on the public docket or other public sources on the Internet, including, without limitation, the following public filings:

- Discovery Proposal Pursuant to Court's December 13, 2016 Order, filed **January 20, 2017**, in San Mateo Superior Court (CIV533328)
- Reply to Opposition to Motion to Remand, filed **February 9, 2017**, in the Northern District of California (3:17-cv-00359-WHA, N.D. Cal.)
- Fourth Amended Complaint, filed **November 1, 2017**, in San Mateo Superior Court (CIV533328)
- Fifth Amended Complaint, filed **January 12, 2018**, in San Mateo Superior Court (CIV533328)
- Opposition to Individual Defendants' Anti-SLAPP Motion, filed **May 17, 2018**, in San Mateo Superior Court (CIV533328)
- Proposed Order Denying Individual Defendants' Special Motion to Strike, filed **July 9, 2018**, in San Mateo Superior Court (CIV533328)

15. Many of the filings in paragraph 14 above have been accessible to the public, the Court and Facebook for a year and up to two and one-half years. At no time until these past few months did Facebook allege any repeated violations of the Protective Order or other Court Orders. Numerous other filings just as old contain similar information regarding 643's allegations in the case.

16. Based on the above information in paragraph 12 that has been available on the public docket for up to two and one-half years, a member of the public who ***never*** had any access whatsoever to Facebook's confidential files could have drafted and sent the very same emails 643 and its legal team sent to media and government entities.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was entered into on April 12, 2019 in Bronxville, New York.

Thomas Scaramellino